



## WORKFORCE CONNECTION



Anaconda Job Service  
One Stop Workforce Center  
307 East Park Street  
Anaconda, MT 59711



### Manager's Corner

Marilyn Ohman, Manager



#### Businesses....we need your input!!!

WE NEED YOUR INPUT!!! The Anaconda Job Service Workforce Center has had an active and successful Job Service Employer's Committee up until the last year. Business representatives serving on the committee either retired or changed jobs depleting our JSEC to two people. We are asking for your help and input. Owners don't have to represent their own business. If you have an HR manager, you can appoint them to be your voice. The Job Service Employer's Committee was formed years ago as an advisory committee to the local Job Service Offices throughout the state and were the Job Service's voice to our state representatives and senators in supporting Montana Businesses. Most of the 23 Job Service offices in the state have very active Job Service Employers Committees that support and represent the needs of local businesses, the local area and the local workforce. The Tri-County area should be no different. Our businesses have their own unique issues and needs that your local Job Service One Stop Workforce Center can address and assist with.

We are asking for your assistance in revitalizing our Job Service Employer's Committee. Whether you are a private, non-profit or a public agency....if you hire employees.....we need your voice and representation in this group. The timing is perfect as we want to be ahead of the curve as Southwestern Montana is being discovered. With this discovery, businesses will feel the workforce impact and the Job Service Employer's Committee is designed to assist businesses with those types of needs. The committee meets once a month for one hour. Some of the topics addressed include HR issues, job training and retention needs, recruitment and talent search, workforce and economic development. JSEC's can assist in sponsoring and organizing area career and job fairs, workforce training and more.

We want our business customers to be heard and represented in the Tri-County areas and the best way to get that done is to have an active JSEC. We, at Job Service are here for you, our business customer and want to make sure that the services we offer are what you need. Your FUTA tax dollars fund our operation.

Join us and put the Tri-County JSEC back on the map. Call me at 563-4121 or Shirley at 563-4122 for more information.

Marilyn Ohman, Manager

#### Current Unemployment Rate Numbers in the Tri-County Area

COUNTY /MONTH	JUNE	JULY
DEER LODGE	5.5%	4.7%
POWELL	5.9%	6.4%
GRANITE	5.2%	4.7%
STATE OF MONTANA	4.1%	4.2%

For more information on statistics in Montana or in your county, go to Montana's Research and Analysis website at:

[www.ourfactsoffuture.org](http://www.ourfactsoffuture.org)

Find prevailing wages for specific occupations, apprenticeship information, career exploration information and resources, census information and more..



## Independent Contractor vs. Employee

Employers are obligated to ensure the workers they hire as Independent Contractors are truly Independent Contractors!!!! The Independent Contractor MUST MEET Independent Contractor Criteria and hold an Independent Contract Certification issued by the Montana Department of Labor and Industry. The Department has the authority to investigate the working relationship between an independent contractor and the hiring agent. Fines of up to \$1000 per violation may be assessed against the hiring agent and/or the Independent Contractor.

### The AB Test

How can you tell if an individual is an independent contractor (IC) or an employee? An IC is a worker who has the IC exemption certificate and meets the following conditions when he or she renders service in the course of an occupation: he or she (A) has been and will continue to be free from control or direction over the performance of the services, both under contract and in fact; and (B) is engaged in an independently established trade, occupation, profession or business, and further acknowledges no coverage under the Workers' Compensation and Occupational Disease Act. To obtain the IC exemption certificate, each applicant needs to supply sufficient documentation to the Department that B requirements are satisfied. Through monitoring and auditing, the Department determines that A requirements are satisfied. This two-pronged determination of IC status is commonly referred to as the AB test. The 2005 Legislature strengthened and clarified the process for determining how individuals are measured by the AB test, including putting in place an objective point system to rank the individual business components of IC applicants. The AB test is more objective, specific and documented, and the new IC law also specifically re-establishes the conclusive status of the IC exemption certificate.

### Important Elements of the NEW IC Law

The law now requires that independent contractors either have the exemption certificate or purchase workers' compensation insurance coverage on themselves. Failure to obtain the exemption certificate or workers' compensation insurance will result in the state treating the worker as an employee of the hiring agent. Hiring agents will be responsible for claims for injuries or occupational diseases and for payment of premiums on the wages of those considered their employees.

To be conclusively presumed to be an independent contractor, the Department of Labor & Industry (DLI) must approve an application for an IC exemption certificate based upon a submission of a complete application after April 28, 2005, and the person must be working under the IC exemption certificate.

The new law states that a "Person" means a sole proprietor, a working member of a partnership, a working member of a limited liability partnership, or a working member of a member-managed limited liability company. To be "working under" an IC exemption certificate, the worker must be performing the occupation listed on the certificate and the hiring agent and the independent contractor must not have a written or an oral agreement that the independent contractor's certificate holder's status is that of an employee.

The Department has the authority to investigate the working relationship between an independent contractor and his/her hiring agent. The Department may suspend or revoke an independent contractor exemption certificate. Fines may be assessed against the hiring agent if control is exerted to the extent it creates an employer/employee relationship. IC certificate holders are required to keep the information on their certificate current.

**To be an independent contractor in Montana; the worker must be free from control or direction of the hiring agent; be engaged in their own independently established business, occupation, trade or profession; and hold a current Independent Contractor Exemption Certificate.**

The hiring agent is obligated to ensure the workers they hire as ICs are truly ICs! The hiring agent should obtain proof of the ICs insurances. They must make sure their relationship with the IC is to achieve an end result as opposed to controlling and directing the way the work is done.

Here are some common things to think about when determining control:

\*Payment is on a time basis rather than on a bid or project completion basis. If you are paying them an hourly wage and determine the schedule for them....it is most likely an employer-employee relationship.

\*The pay is determined by the hiring agent, as opposed to the worker submitting a bid and establishing the cost for the project...most likely an employer/employee relationship, not an Independent Contractor.

\*The hiring agent provides substantial tools and equipment necessary to perform the job functions as opposed to the worker providing their own tools and equipment. The hiring agent instructs the worker in what tools to use and how to use them....again this constitutes an employer/employee relationship....not an Independent Contractor.

\*The hiring agent oversees how the work is performed as opposed to the worker completing the project in the manner and means THEY (IC) sees appropriate.

\*The hiring agent explains, shows and/or trains the worker how to perform the work. If the worker receives extensive instructions as how the work is to be done, this suggests the employee relationship and not an independent contractor.

\*If the hiring agent can release the worker from the job without notice or the opportunity to fix the problem and the working relationship can be terminated without liability..it is most likely an employer/employee relationship and not a relationship with an Independent Contractor.

\*When there is no opportunity for profit or loss for the worker, they do not have control. It is an employer/employee relationship.

\*The hiring agent requires the worker to log the time worked on a job....(reporting their hours for pay). it is an employer/employee relationship.

The Montana Supreme Court has stated the following four factors are indicators of control in a working relationship.

1. Evidence of control including the right to control.
2. The furnishing of equipment.
3. The method of payment.
4. The right to fire without liability.

The consideration given to each of these factors is not a balancing process. A worker maybe an employee simply by the strength of one of the four factors. ALL four need to be met to be an independent contractor.

For more information about these changes, please refer to our website at [www.mtcontractor.com](http://www.mtcontractor.com)

### Skills Testing...What we offer!

Are you finding that those you hired really don't have the skills they said they possessed? Job Service can test applicants in certain skill areas through our Prove IT! Software. It is a free service to any employer that depends on technical skills needed in the workplace. Hiring individuals without proof and later finding out that those skills are weak or non existent can be costly to businesses. We do not test anyone registered to look for work with us but will test them when an employer requests that we do. The tests are of no cost to the employer or the applicant.

If you are finding a consistent pattern of potential employees lacking skills as shown in test results, it can be a good way for you to identify training needs that you, as the employer can consider. The test result can help you develop a training curriculum that will fit your business needs.

This software provides testing in over 800 different areas such as Microsoft Office, healthcare, industrial, financial, legal and test tech packages and more. Please contact our office for more information at 406-563-3444.

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Phone: 406-563-3444

*Superior Service for a Working Montana.*



WE'RE ON THE WEB

- [wsd.dli.mt.gov/local/anaconda](http://wsd.dli.mt.gov/local/anaconda)



## B.E.A.R. Interviews

Volunteer for a B.E.A.R. interview. Be OPEN for business. The B.E.A.R program is a statewide program offered to area businesses to help in keeping their business successful. B.E.A.R (Business Expansion and Retention) offers business owners like you the opportunity to share insights. Many businesses in Montana have received assistance in areas such as workforce training, business management, global and domestic marketing and acquiring financial support. The BEAR program's resource referrals assist businesses in evaluation growth potential, addressing areas of concern and referring them to resources they might otherwise not know exist. Some of the assistance offered includes marketing plans, business plans, training and education, information technology and more. We would like to interview any business in Southwestern Montana:Anaconda, Deer Lodge and Philipsburg.

The Southwest Montana Bear Team consists of individuals from economic development, workforce development, and financial institutions in the Butte/Anaconda area. All information acquired is confidential. Give B.E.A.R. a try. You will be amazed at the information and resources that come out of your interview. Call Shirley at 563-4122 or Marilyn at 563-4121 to schedule your interview.



### HELP US GO GREEN!!

IF YOU DIDN'T RECEIVE THIS NEWSLETTER BY EMAIL AND YOU DO HAVE AN EMAIL ADDRESS WHERE WE CAN EMAIL YOU THIS NEWSLETTER, PLEASE LET US KNOW. SEND THE ADDRESS TO MOHMAN@MT.GOV.

WE WILL EMAIL EACH EDITION TO YOU INSTEAD OF WASTING PAPER AND POSTAGE. WE WILL NOT SHARE EMAIL ADDRESS LIST WITH ANYONE. IF YOU DID RECEIVE IT BY EMAIL BUT WOULD LIKE US TO SEND THIS INFORMATION TO A DIFFERENT ADDRESS LET US KNOW. HELP US GO GREEN!!!!